IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 769 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHAH JAYANTILAL BHOGILAL

Versus

SUBI BEEJ KENDRA AND OTHERS

Appearance:
MR KG VAKHARIA for Appellant.
MR HM PARIKH for Respondents No. 1 & 2
MR ST MEHTA, A.P.P. for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 29/11/96

ORAL JUDGEMENT: (Panchal,J.):-

By means of filing this appeal under section 378(4) of the Code of Criminal Procedure, 1973, the appellant, who is original complainant, has questioned

legality and validity of judgment and order dated December 20,1984, rendered by the learned Additional Sessions Judge, Panchmahals at Godhra, in Criminal Appeal no. 32/84 by which conviction and sentences imposed on respondents no.1 & 2 by the learned Judicial Magistrate, First Class, Kalol vide judgment and order dated May 30,1984,in Criminal Case no.636/82 are set aside.

2. Kalol Taluka of District Panchmahals was declared to be a market area under the provisions of The Bombay Agricultural Produce Markets Act,1939 and is deemed to have been so declared in view of the provisions of section 2(xiii) r.w.section 64(2)(i) of The Gujarat Agricultural Produce Markets Act,1963 ("the Act" for short). Derol Agricultural Produce Market Committee was established for Kalol Taluka under the provisions of The Bombay Agricultural Produce Markets Act,1939 and is deemed to have been so established in view of the provisions of section 2(xiv) r.w.section 64(2)(ii) of the Act. Section 8 of the Act provides that no person shall operate in the market area or any part thereof, except under and in accordance with the conditions of a licence granted under the Act. It was the case of the appellant that respondents no.1 & 2 as well as one Kanaiyalal Shankerlal Shah purchased and sold bajari seeds without obtaining licence from the competent authority. Under the circumstances, the appellant filed complaint in the Court of learned Judicial Magistrate, First Class, Kalol against respondents no.1 & 2 as well as Kanaiyalal Shankerlal Shah and prayed the Court to punish the accused under section 36 of the Act.

3. On receiving the complaint, learned Magistrate issued summons to the accused for the offence punishable under section 36 of the Act. The accused appeared before the learned Magistrate whereupon the contents of the complaint were read over and explained to them. The accused pleaded not guilty to the charge levelled against them in the complaint. Therefore, the appellant examined himself at exh.21. He also examined Dahyabhai Amichand Patel, PW 2 at exh.35 and Ratansinh Chhatrasinh, PW 3 at exh.37 in support of the case pleaded by him in the complaint. After recording of evidence of the witnesses was over, the learned Magistrate questioned the accused generally on the case and recorded their statements under section 313 of the Code of Criminal Procedure,1973. In their further statements the accused stated that case against them was false. However, none of them led any evidence in defence.

4. On consideration of the evidence led by the

appellant, the learned Magistrate concluded that the respondents no.1 & 2 had operated in the market area without obtaining necessary licence from the competent authority and had,thus, committed breach of provisions of section 8 of the Act, which is punishable under section 36 of the Act. The learned Magistrate also held that no evidence was led by the appellant to indicate that Kanaiyalal Shankerlal Shah had operated in the market area without any licence. In view of these conclusions, the learned Magistrate acquitted original accused no.3, but convicted present respondents no.1 & 2 under section 36 of the Act and sentenced them to pay a fine of Rs.250/each or i/d. to undergo S.I. for 15 days, by judgment and order dated May 30,1984.

5. Feeling aggrieved by the order of conviction and sentences, respondents no.1 & 2 preferred Criminal Appeal no. 32/84 in Sessions Court, Panchmahals. The learned Additional Sessions Judge, Panchmahals at Godhra, who heard the appeal, has allowed the same by judgment and order dated December 20,1984, giving rise to the present appeal. The acquittal of original accused no.3 was not challenged by the appellant and it has become final.

6. Mr. K.G.Vakharia, learned Senior Advocate has taken us through the entire evidence on record of the case. It was submitted that without obtaining licence from the competent authority, respondents no.1 & 2 had operated in market area by sale and purchase of bajari seeds and, therefore, the present appeal deserves to be accepted and the respondents no.1 & 2 should be convicted under section 36 of the Act. Mr. S.T.Mehta, learned A.P.P. appearing for the State Government has also pleaded that dealing in bajari seeds would amount to dealing in agricultural produce within the meaning of the Act and, therefore, respondents no.1 & 2 should be convicted under section 36 of the Act.

7. Mr. H.M.Parikh, learned Counsel appearing for respondents no.1 & 2 submitted that bajari seeds can not be said to be an agricultural produce within the meaning of section 2(i) of the Act read with Schedule annexed to the Act and as the view taken by the first appellate Court is eminently just, the appeal should be dismissed.

8. The short question, which falls for the consideration of the Court, is whether bajari seeds can be termed as an agricultural produce within the meaning of section 2(i) of the Act. On behalf of the appellant, Dahyabhai Amichand Patel was examined at exh.35. At the relevant time, he was serving as Assistant Seeds

Certifying Officer and was posted at Godhra. It was his duty to certify seeds grown in Kalol Taluka. From his evidence, it is apparent that respondents no.1 & 2 had purchased bajari seeds from Manorpuri and Lalpuri villages of Kalol Taluka for selling the same to agriculturists. In cross-examination, the Assistant Seeds Certifying Officer has admitted that one has to register a plot for the purposes of raising bajari seeds. It is not in dispute that respondent no.1 had got registered itself as main grower of bajari seeds. From the evidence led by the appellant, there is no manner of doubt that the main grower has to supply parent seeds to sub-growers through recognised institutions. The evidence led on behalf of the appellant further shows that on receiving parent seeds, certain rules are required to be followed strictly and the male seeds have to be grown in two lines, whereas female seeds have to be grown in the adjoining six lines and these eight lines, in all, are to be secluded from other crops by maintaining reasonable distance. It is an admitted fact that such isolation is not necessary for growing bajari cereals which is mentioned as item no.(4) in Part-II of the Schedule relating to cereals. As is evident from the deposition of Assistant Seeds Certifying Officer, strict supervision and vigil is necessary for growing bajari seeds. As per his evidence, after crop of seeds is raised, male seeds plants are required to be cut of and only female plants, which are capable of giving bajari grains are to be utilised for hybrid bajari. His evidence further shows that sample of the seeds is to be tested in Seeds Laboratory and after seeds are found in conformity with the standards laid down therefor, it is certified as seeds in its proper term. It is an admitted position that for growing ordinary bajari,such a procedure is not required to be undergone at all. The witness has admitted that seeds can never be brought to market yard and sold by public auction. Under the circumstances, the view taken by the learned Appellate Judge that commodity in which respondents no.1 & 2 had dealt with,is not an agricultural produce, cannot be said to be erroneous or illegal so as to warrant interference by the Court in the present appeal.

9. Witness Dahyabhai Amichand Patel examined on behalf of the appellant, has admitted in his evidence that bajari seeds are packed in small bags of 1 1/2 kg.each after treatments are given with poison, which means that the commodity which is prepared as bajari seed,is poisonous and is unfit for human consumption. The schedule to the Act provides list of cereals, 15 in number, which should be considered as agricultural

produces as per the definition given in section 2(i) of the Act. It is relevant to notice that bajari is mentioned at serial no.4 under head of "cereals" and, therefore, anything which is not a cereal,cannot be considered to be an agricultural produce within the meaning of the Act read with Schedule to the Act. In common parlance, cereal means relating to edible grain or a grain used as food, such as wheat, bajari etc. The word 'cereals', in our view, as contemplated by the Schedule, has a specific reference to grain raised for human consumption and not to grain used for preparing seeds. Bajari as a cereal and bajari as a seed, are two different commodities and seeds of bajari can never be held to have been included under the provision of the Act.

10. Similar question came to be considered by Supreme Court in the case of THE STATE OF RAJASTHAN etc. vs. RAJASTHAN AGRICULTURE INPUT DEALERS ASSOCIATION etc. JT. 1996(6) SC 217. There the respondents were engaged in the business of purchase and sale of seeds. One of them raised and sold bajara seeds. It was the case of the respondents that bajara seeds cannot be termed to be agricultural produce for the purposes of Rajasthan Agricultural Produce Markets Act,1961 and its Schedule as amended from time to time. It was maintained that seeds are a processed item and coated by insecticides, chemicals and other poisonous substance whereby the grains employed lose their use and utility as food grains and become unfit for human or animal consumption. The appellants required the respondents to obtain licences for engaging in the trade of purchase and sale of seeds and threatened prosecutions in the event of failure. The action of the appellants was, therefore, challenged by the respondents before High Court. The High Court, on consideration of the entire matter, took the view that when the food grains of particular varieties were treated and subjected to chemical process for preservation, those grains become commercially known as "seeds" and it is not necessary for the respondents to obtain licence under the Act. The said view was challenged by the appellants before the Supreme Court.After taking into consideration the relevant provisions of Rajasthan Agricultural Produce Markets Act,1961 and the use to which bajara seeds can be put to, the Supreme Court has held as under :-

> "It is undoubtedly true that foodgrains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being foodgrains as well as seeds. By process of coating and

> applying insecticides, other chemicals and poisonous substances to the foodgrain meant to be utilised as seeds, one of its basic character i.e. its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly."

From the above quoted decision of the Supreme Court, it is evident that by process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrain meant to be utilised as seeds, one of its basic character i.e. its consumption as food by human beings or animals gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. In our view, therefore, the learned Appellate Judge was justified in concluding that bajari seeds can not be considered as agricultural produce within the meaning of section 2(i) of the Act. As the appellant failed to establish that respondents no.1 & 2 were operating in the market area, without licence, in agricultural produces, in our view, the learned Judge was justified in acquitting respondents no.1 & 2.

11. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal.Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & Ors. vs. BIJENDRA NARAIN CHAUDHARY, A.I.R. 1967 S.C. 1124, and (2) STATE OF KARANATAKA vs. HEMA REDDY AND ANOTHER, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for

acquitting the respondents and the learned Counsel for the appellant has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, acquittal appeal deserves to be rejected.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed.

=======